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HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

No. 468 MISC.

In re: PAYSOFF TINKOFF,
An Attorney, Petitioner.

PETITION FOR REVIEW ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

AND

MOTION TO SUE AS A POOR PERSON

AND

TO EXTEND TIME 20 DAYS TO FILE AMENDED BRIEF.

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Chicago, Illinois.

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAKEVIEW 5-6581

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TO EXTEND TIME 20 DAYS TO FILE AMENDED BRIEF.

To the Honorable the Chief Justice and Associate Justices of the United States Supreme Court:

Now comes your Petitioner, Paysoff Tinkoff, appearing *pro se* and petitions this Court that a Writ of Certiorari issue to the Supreme Court of Illinois, to review and set aside the order entered by said Court denying your Petitioner's Petition for Reinstatement as a member of the Bar of said Court, and in support thereof alleges:

I.

Jurisdiction.

This is a Petition for a Writ of Certiorari from a Final Order entered by the Supreme Court of Illinois, on January 13, 1953, (R. 288), denying a motion to vacate an order entered on November 11th, 1952, (R. 283), denying Petitioner's petition for Reinstatement filed on May 16, 1949, (R. 1).

II.

Summary Statement of Facts.

(1) That on May 16, 1949, Petitioner filed his Petition for Reinstatement with the Supreme Court of Illinois, alleging his disbarment on June 9, 1937, based on a conviction in a Federal Court, upon an indictment returned in June, 1932, and a conviction entered in July 1934, charging a violation of 26 U.S.C.A. Sec. 145(b), with aiding and abetting a taxpayer to wilfully evade his Federal Income Taxes, and incorporated various affidavits recommending reinstatement, previously filed with a prior petition for reinstatement on April 26, 1941 (R. 1-6).

(2) That on May 19, 1949, the Court referred Petitioner's Petition for Reinstatement "to the Commissioners of the Chicago Bar Association" for *hearing* and report as to the merits of said petition (R. 7).

(3) That on June 24, 1949, the Commissioners, without granting your petitioner any *hearing* whatsoever or to be present, as directed by the Order of reference, did make a report on their own motion, to the Supreme Court of Illinois recommending "that the application of the petitioner, Paysoff Tinkoff, to be reinstated on the roll of attorneys, be denied" (R. 9, 10).

(4) That on July 5, 1949, Petitioner's Exceptions to the Commissioner's Report (R. 42) were filed with the Supreme Court of Illinois, that the Commissioner's finding was made without giving your Petitioner an opportunity to be heard (R. 39, 40), and violating his constitutional rights.

(5) That on Sept. 12, 1949, Petitioner filed a motion with the Supreme Court, requesting an extension of 30 days from Sept. 12, 1949 to file the Complete Record and Abstract of Record of the disbarment proceedings, current and prior, to consist of about 650 pages, at a cost of about $450.00, and alleging thereon that on July 25, 1949 (R. 43) Mr. Justice Francis S. Wilson of the Supreme Court in vacation sitting, refused to entertain a similar motion, on the ground that Reinstatement proceedings are "Non-Record" proceedings, and that the Supreme Court has no rules adopted relating to "Reinstatement of Attorneys" (R. 43, 44, 45), to which Motion, the Chicago Bar Association, filed Objections on Sept. 13, 1949 (R. 47, 48, 49), and on Page 48, *Amicus Curiae*, alleges:

> "(1) This proceeding is not a proceeding wherein a record and abstract of record is required. It is a non-record proceeding, based usually upon the report of the Commissioners. Ordinarily where petitioner pays the costs, a transcript of the evidence is filed with the report of the Commissioners."
>
> • • •
>
> "(3) *This Court has never required that briefs be filed in the matter of petitioners for reinstatement,* and has acted upon them (meaning Petitions for Reinstatement) by entering an order on the *non-record* docket. This Court has twice denied the petition of petitioner for reinstatement. *It is submitted that the allowance of the motion of petitioner would serve no useful purpose.* In so far as the *transcript of record* is concerned, the Commissioners do not deem that

the Court will now again review the record upon which it acted in 1944, and in so far as the motion for leave to file an *abstract* is concerned, *this Court has at no time made any provision therefor.*" (Italics supplied.)

(6) That petitioner allege that due to financial embarrassment he was unable to have the transcript of evidence of about 650 pages certified to the Supreme Court in 1944 (R. 43), and further that petitioner had introduced 26 witnesses, including 2 Judges, all of whose testimony was ignored by the Commissioners, and that Amicus Curiae only introduced 3 witnesses including 2 Judges, and all of their evidence was approved and quoted in the Commissioner's report, in 1944 (R. 44, 60).

(7) That on Sept. 14, 1949, the Supreme Court allowed Petitioner's motion to extend the time 30 days from Sept. 12, 1949, to file the Record and Abstract of Record, of the hearings before the Commissioners (R. 49).

(8) That on Sept. 15, 1949, Petitioner filed a Motion supported by a verified petition to have the Secretary of the Commissioners certify the record of their current hearings about June 24, 1949, pursuant to the order of May 19, 1949 (R. 50-54), upon prepayment of Costs, which the Secretary refused to do without a specific order from the Chief Justice (R. 54), and this Motion to certify the record itself upon which the Commissioners based its report of June 16, 1949, filed June 25, 1949, was also denied (R. 57).

(9) That on Sept. 12, 1950, Petitioner again filed a Motion, supported by a verified Petition for an order to have the Commissioners certify the complete record from 1941 to date, upon prepayment of costs and to Abstract the same, and file a Brief in support of his Objections to

the Commissioners' report dated June 16, 1949, and filed June 25, 1949, since the Commissioners transmitted with this Report of June 16, 1949, the former reports of Nov. 16, 1949 and Feb. 24, 1944 (R. 8 to 37).

(10) That on Sept. 13, 1950, Amicus Curiae filed Objections, to the motion of Sept. 12, 1950, and stated in part as follows:

> "(1) This Court on Sept. 15, 1949, *denied a motion for an order on the Secretary of the Committee on Grievances to certify proceedings of the Commissioners of the Chicago Bar Association.* This petition now presented shows no ground for the vacation of this order of the Court.
>
> (2) This proceeding is *not* a proceeding wherein a record and abstract of record are required. It is a non-record proceeding, *based usually upon the report of the Commissioners.* Ordinarily, where petitioner pays the cost, a transcript of the evidence is filed with the report of the Commissioners.
>
> • • •
>
> (5) It is respectfully submitted that the record in this Court shows beyond the peradventure of a doubt that not only has petitioner *not* rehabilitated himself but has indicated repeatedly that his petition should be denied." (R. 67, 68) (Italics supplied.)

(11) That on Sept. 26, 1950, the above motion to certify the transcript upon prepayment of costs was denied. (R. 69)

(12) That on October 16, 1950, Petitioner filed a Motion, supported by a verified Petition that the Court render a decision or rule upon Petitioner's Petition for Reinstatement filed May 17, 1949, the Commissioner's Report filed June 25, 1949; the Petitioner's Exceptions filed July 3, 1949, and the Petition for Certification of the Record filed Sept. 12, 1950 and denied Sept. 27, 1950 (R. 70-73); and al-

leged that Petitioner's constitutional rights of "due process" were denied him as guaranteed by the Constitutions of the State of Illinois and the United States (R. 71), and this Motion *was denied on Oct.* 16, 1950 (R. 74).

(13) That on Feb. 1, 1952, Petitioner filed his Motion, supported by a verified petition, for (1) leave to file an Amendment to his Petition for Reinstatement instanter; (2) to dispose of Petitioner's motion of Oct. 16, 1950, filed with Chief Justice Simpson; (3) that unbiased Commissioners be appointed; and (4) for subpoenaes to issue (R. 75-202); that the order to which has not been certified by the Court, except that on April 22, 1952 an order was entered stating that the Amendment to the Petition was filed on Feb. 1, 1952 (R. 210).

(14) That this Amendment to the Petition showed that the prosecuting officials at all times knew of the innocence of your Petitioner, and the guilt of William J. Newman; and that said prosecuting officials caused William J. Newman to change his testimony that your petitioner was innocent; and conspired to have William Newman change his testimony and testify falsely against your Petitioner, on condition that his tax liability would be reduced from about $2,000,000.00 to $150,000.00 and that he would receive, at their recommendation, a light fine and no prison sentence; and also would receive governmental contracts to pay the reduced tax liability. That said prosecuting officials suppressed evidence of your Petitioner's innocence that allowed perjured testimony to be introduced at the criminal trial of your Petitioner, thus perpetrating a fraud upon the Trial Court (R. 76 to 201).

(15) That said William J. Newman on *July* 16, 1927, (five (5) years before the Indictment) wrote to your Petitioner that he had no bank account at the Reliance State

Bank of Chicago, when your Petitioner was auditing his accounts, and that this was the Bank in which William J. Newman had his account, relating to graft payments in Chicago, totalling in excess of one million dollars annually in 1926, 1927, and 1928 (R. 86, 122), same being to wit:

EXHIBIT F.

July 16, 1927

Paysoff Tinkoff Co.,
Strauss Bldg.,
Chicago, Ill.

Gentlemen:

In accordance with the request of Miss Quigley, we wish to advise that when the various letters you wrote last spring to various banks for certification of our accounts, *the letter to the Reliance State Bank was not returned to you, the same being taken out by Newman. He felt that there was no necessity for the letter to the Reliance Bank in so far as the company has no account thereat.*

Yours truly,
W. J. Newman Company
Per

TFG:AS

(16) That the Washington Attorney of William J. Newman, Louis A. Gravelle, wrote to his Chicago Attorney, Dwight H. Bobb, under Feb. 12, 1931, of the William J. Newman testimony given under oath, at the Washington Conferences on Feb. 6th and Feb. 7th, 1931, where said William J. Newman repeatedly stated "the innocence of your Petitioner," and that he was collecting graft payments of which "no one, except himself, had knowledge

thereof, parts of said letter Exh. H of the Amended Petition (R. 127, 128, 129) are quoted herein (R. 89, 90):

> "On three occasions they asked Mr. Newman at the hearing if he ever told Mr. Tinkoff that he was collecting money that belonged to the company and depositing same in his personal bank account in the Reliance State Bank, *on the first two occasions Mr. Newman stated that Mr. Tinkoff did not know of this*, but on the third occasions he stated 'he must have known'. I understand confidentially from the Department that Mr. Newman's sister has stated to Government representatives that Tinkoff knew of this money going into the Reliance State Bank account of Mr. Newman."
>
> "*If Newman would be willing to testify that Tinkoff was advised by him of the collections belonging to the company going into the Reliance State Bank*, the *Newman* case can be settled without any indictment and the Government would go after Tinkoff."

On page 3, said Attorney Gravelle further states to Attorney Bobb, in part:

> "Some months ago someone in *Tinkoff's* office wrote a letter to either Mr. Newman or the company asking something about the Reliance State Bank account. It is my understanding that the letter was an inquiry as to whether the bank account belonged to the company. Mr. Newman replied specifically to the letter saying that the *corporation did not have any bank account in the Reliance State Bank.* Green laid great stress on this feature of the case but personally I do not think it should be given much weight. He seems to think that through this correspondence *Newman was trying to keep every one away from an investigation of the Reliance Bank account.*"

On page 3, said Attorney Gravelle states to Attorney Bobb, in part as follows:

> "Of course, *Mr. Newman, cannot tell to whom he has paid the graft in the past*, but he has been put on

notice that he will have similar trouble each year if he continues to operate as he did prior to this time."

On page 4, said Attorney Gravelle says to Attorney Bobb, in part as follows:

"If the Government indicts Mr. Newman from the record in the case there is a possible chance that they may be able to convict. If Mr. Newman is indicted it will ruin his business even though he is not convicted. *Would it be possible to secure an understanding with the several larger contractors in Chicago that no further graft will be paid.* This may be impossible, but some consideration should be given to this suggestion, as it may be our solution in keeping the Government from indicting Mr. Newman. The Government, I understand, confidentially may indict the officers of Pashen Brothers and Griffiths and the Great Lakes Dredge and Dock Company may have further trouble with the Department. Several smaller contractors have already been indicted and one, I understand, has been convicted." (Italics supplied.)

(17) That said William J. Newman further testified under oath, as alleged in Petitioner's Amended Petition (R. 93), in substance, as follows:

"That I (meaning William J. Newman) would not live twenty-four (24) hours, if I disclosed to whom these graft payments were made. That I'd rather go to jail, regardless how long, before I would divulge the payees of these graft payments. My life means more to me than that."

(18) That the Attorney-General of the United States rejected various compromise offers of William J. Newman and William J. Newman Co. made on May 18, 1932, Dec. 20, 1933, on Aug. 19, 1932 and March 21, 1934 (R. 102, 103).

(19) That said William J. Newman, after retaining Attorneys James A. O'Callaghan of Chicago, and A. K.

Shipe of Washington, D. C., said Compromise offer of Dec. 20, 1933 was resubmitted to the Attorney-General on March 28, 1934 (R. 103, 104), and was accepted by the Attorney-General and April 6, 1934, within nine (9) days thereafter, on condition that said William J. Newman plead guilty in the criminal proceeding, and testify falsely against your Petitioner, his co-plaintiff, in said criminal case (R. 103, 104).

(20) That said William J. Newman in his report to the Government prior to June 1932 (R. 136, 137, 179 to 201), summarized (R. 107, 108, 109) specifically stated under oath, with the knowledge of his Attorneys, Accountants and the prosecuting officials, that his company did not receive the "City of Chicago" contracts, 40 or 50 in number (R. 201, 202), but that they were taken in his name for the benefit of his friends, said Contracts totalling about $500,000.00, when he stated in part as follows, under oath in said report:

> "On the alleged forty or fifty contracts for the City of Chicago * * * (R. 109 and 201, 202) Mr. Newman consented to the use of his name of 'W. J. Newman Wrecking Co.' for these contracts to be awarded to, but the transaction was never in those cases more than the use of his name * * * These contracts were let to Mr. Newman as an accommodation on his part to friends of his in the business * * * Mr. Newman never did the work and never intended to do the work *and everybody knew it.* * * * *Since Newman didn't do the work he naturally would not stand for the records of his business being complicated by running these jobs through his books. He put the money in his own bank account and there held it as trustee for the people who were entitled to it, and he paid it to them.*" (Italics supplied).

(21) That said William J. Newman testified falsely, with the knowledge and consent of the prosecuting officials,

that your Petitioner had actual knowledge of the City of Chicago contracts totalling about $500,000, and that your Petitioner advised William J. Newman to omit same from the books of the William J. Newman Wrecking Co.; and that William J. Newman Accountant and Secretary, also testified thereto, as well as the public officials of the City of Chicago, all of which said W. J. Newman and the prosecuting officials knew to be false, and thus perpetrated a fraud upon the Trial Court (R. 114, 115 par. 78, 79, 80, 81).

(22) That on Aug. 1st, 1934, two days after your Petitioner was sentenced to 18 months imprisonment, on July 30, 1934, and immediately after William J. Newman's sentence of a fine of $2,000.00, William J. Newman Company executed two notes to Dwight H. Bobb, one of his Chicago attorneys for $42,420.00, and another to James A. O'Callaghan for $30,000.00 (R. 101, 137, 138), making a total of $72,420.00 for legal services rendered.

(23) That on Jan. 30, 1935, while your Petitioner was endeavoring to perfect his Appeal from his conviction, and while he illegally was confined at Leavenworth, Kansas, pending said appeal, the United States District Attorney and James A. O'Callaghan, without notice to your Petitioner, by stipulation, entered an order to withdraw all the books and records of the co-defendant and co-conspirator of William J. Newman and William J. Newman Company from the Court (R. 112, 113, 156), and which records were immediately destroyed by said William J. Newman aforementioned, thus greatly affecting the perfection of the appeal by your Pettiioner, although impounded by the Court from 1930 on.

(24) That said William J. Newman and William J. Newman Company had filed Petitions under the Bank-

ruptcy Act, as Amended, in December, 1934, and that said books and records were thus constructively in the possession of the Bankruptcy Court, from the date of the filing of the Bankruptcy petitions.

(25) That one of the Commissioners of the Supreme Court of Illinois, during the Disbarment hearing of your Petitioner, openly stated during said hearing "off the record"

> "That the trial of Paysoff Tinkoff, took place in *his* presence in the office of a Banker, in advance of the actual trial in the United States District Court." (R. 161)

(26) That the prosecuting officials knew (of which your Petitioner had no knowledge)—that said William J. Newman Company kept two sets of books, to defeat the Government from its just income taxes (R. 114, 115, 117-162).

(27) That Edward J. Kelly, the Chief Engineer of the Sanitary District of Chicago, and later Mayor of the City of Chicago, was about to be indicted for receiving substantial graft payments from William J. Newman, and that the dropping of said indictments against said Edward J. Kelly was one of the inducements for William J. Newman to plead guilty and testify falsely against your Petitioner (R. 116, par. 85).

(28) That the Court appointed an Attorney, who was an ex-United States Assistant Attorney, at the suggestion of the United States District Attorney, *and over the objection of the Petitioner*, to represent the Petitioner in his criminal prosecution because of his financial inability to employ competent counsel (R. 163), and which counsel prevented your Petitioner from introducing competent evidence (R. 163).

(29) That on April 22, 1952, the Supreme Court of Illinois allowed the Amended Petition for Reinstatement filed Feb. 1, 1952, to be further Amended by adding as Exh. XIII thereto, the affidavit of William J. Newman Jr., executed on Nov. 26, 1951, the son of co-defendant and co-conspirator William J. Newman, (R. 210) (Affidavit of W. J. N. Jr.) (R. 204 to 209) deposing therein that your Petitioner was convicted on perjured testimony at the direction of the politicians and prosecuting officials.

(30) That said affidavit of William J. Newman, Jr., reaffirms that the petitioner's conviction was brought about by perjury being committed at the instance of, and with the knowledge of, the prosecuting officials, and that affiant's father was forced to testify falsely, and that the prosecuting officials, and affiant's father, and all who testified against petitioner, knew of petitioner's innocence, but were forced to testify falsely (R. 204 to 209) to endeavor to show his guilt wrongfully.

(31) That on May 5, 1932, the Supreme Court of Illinois entered an order that the Commissioners make diligent search and deliver to your Petitioner a certified transcript of the disbarment hearing of July 31, 1935 upon prepayment of costs (R. 213), at which petitioner's wife and his attorney, Lawrence M. Fine were present (R. 216), and your Petitioner was unable to obtain said transcript (R. 214, 215).

(32) The Commissioners in its report to the Supreme Court of Illinois, dated May 15, 1952 (R. 223 to 227), all this being *ex parte*, without granting your petitioner an opportunity to be heard, said in part:

> "(R. 224) This matter comes on for consideration on the petition for reinstatement on the roll of attorneys of Paysoff Tinkoff, referred to the Commissioners of the Chicago Bar Association by the Su-

preme Court on May 19, 1949, *and the amendment thereto referred to the Commissioners by the Supreme Court on March* 17, 1952 (Italics supplied) • • •

(R. 225) When respondent's original petition for reinstatement, referred to the Commissioners by the Supreme Court on May 19, 1949, was considered by the Commissioners, a report recommending denial of the petition to be reinstated was transmitted to the Court under date of June 16, 1949. To that report there were attached copies of *two former reports on two former petitions* for reinstatement, one filed under date of Feb. 24, 1944, and one filed under date of November 16, 1946." • • •

"(R. 226) The amendment to the petition of the petitioner (meaning the one filed Feb. 1, 1952) contains nothing material to the issue of *respondent's rehabilitation since his disbarment.* It consists of an attempt to attack the proceedings in the Federal Courts where respondent was convicted and found guilty of the crime which resulted in his disbarment by the Court.

This Court has repeatedly stated that it will not go behind a record of conviction of a crime involving moral turpitude and that such conviction is conclusive upon the Court. (See *In re Needham,* 364 Ill. 65, *In re Pontarelli,* 393 Ill. 310).

More recently the Court stated in *In Re William Goldstein* (Advance Sheets March 26, 1952, 411 Ill. 360, page 364) that:

"We do not consider it the province of this Court, in a disbarment proceeding, to review, commend, criticize or change any decision of courts of competent jurisdiction, much less opinions of the United States Courts • • •"

Respondent's remedy if he was innocent in the criminal trial, is either to have his conviction set aside by the

courts having jurisdiction, or to secure a pardon from the (R. 226) *Government of the United States on the ground of innocence.* • • •

The petitioner in effect desires that a new trial be had before the Commissioners on the question of his guilt or innocence in his former conviction. No precedent can be cited for this anomalous proposition. It is therefore recommended by the Committee on Grievances and by the Board of Managers of the Chicago Bar Association, sitting as Commissioners of the Supreme Court of Illinois, that the application of the petitioner, Paysoff Tinkoff, to be reinstated on the roll of attorneys, be denied." (Italics supplied.)

(33) That the Secretary to the Commissioners under date of June 9, 1952, made an affidavit that a transcript of the proceedings of disbarment of July 31, 1935, were not in her official files and that she was unable to obtain a copy of the same from the Reporter who transcribed the hearing (R. 231-232).

(34) That on July 22nd, 1952, your Petitioner, tendered to the Supreme Court of Illinois a Report of Proceedings of the hearing of July 31, 1935, to be marked "Presented, and after examination" approved, (R. 236 to 250) and this motion was continued to Sept. 8, 1952 to be acted on by the full court (R. 237).

(35) That your Petitioner on Aug. 29, 1952, filed his Suggestions to support his Motion to have the Report of Proceeding of July 31, 1935, marked "Presented" and "Approved" (R. 251 to 259) citing the *Universal Oil Products Co.* v. *Root Refining Co.*, 328 U.S. 565, 66 S. Ct. Rep. 1126.

(36) That Amicus Curiae in his Counter-Suggestions to said motion says:

"R. 277. This court will not go behind the record of the conviction. *The only relevant evidence in such a hearing is whether or not there was a trial and a conviction. Proof of that was made, and it was upon that record that the respondent was disbarred.* There has heretofore been filed with this Court a certificate by the Secretary of the Committee on Grievances indicating that no transcript of the proceedings of July 31, 1935 has been available or was ever filed" * * *

"The comments of Commissioner McKinley likewise have no importance or meaning, and, even if given as evidence under oath in behalf of respondent, *have no validity.* Commissioner McKinley, as shown on page 4 of the respondent's suggestions, is stated to have said:

"(R. 278) The indictment of the said Newman was a companion measure to the 'Whoopee' proceedings in the State Courts, and that eight persons were indicted, including the said W. J. Newman, by the United States, including Chris Paschen, Gene Oliver, and others. The trial, of said Paysoff Tinkoff, took place in my presence in the office of a Banker, in advance of the actual trial in the United States District Court.

* * *

"The contracts ran considerable in excess of the amount suggested by Mr. Fine."

"(R. 278) Insofar as his motion for vacation of the order of disbarment is concerned, it is admitted that the basis of that disbarment order, to wit: the criminal conviction, still stands. * * *

"(R. 279) *The respondent contends that he was innocent when convicted of a crime involving moral turpitude.* That contention cannot be sustained on the present record under the decisions of this Court. The conviction in the Federal Court has never been vacated or set aside nor has the respondent been pardoned on the ground of innocence." (Italics supplied)

(37) That the Supreme Court of Illinois under date of September 9, 1952, denied the petitioner's motion to have his "Report of Proceedings" of July 31, 1952, marked "Presented." (R. 280)

(38) That on May 5, 1952, the Court denied petitioner's motion for the United States District Attorney to deliver to this Court hearings in its possession before the Department of Justice on Feb. 6, 1931 and Feb. 7, 1931 (R. 282), showing W. J. Newman statements, under oath, of your Petitioner's innocence.

(39) That on November 11, 1952, the Court entered the following order, not supported by any opinion or decision, denying Petitioner's petition for Reinstatement filed May 17, 1949 (three years and five months after the filing thereof), same being, to wit:

> (R. 283) "It is ordered that the petition for reinstatement filed by Petitioner on May 17, 1949, be, and the same is hereby denied."

(40) That on Nov. 26, 1952, your Petitioner filed his Motion to vacate the order of Nov. 11, 1952, denying reinstatement, and further moved the Court to publish an Opinion supporting the order of Nov. 11, 1952 (R. 284, 285, 286), and same was denied by the Court on Jan. 13, 1953 (R. 288), with no ruling referring to the publication of an Opinion, said order being to-wit:

> (R. 288) "It is ordered that the motion by petitioner filed on November 26, 1952, that the order entered November 11, 1952, denying petition for reinstatement be vacated and set aside be, and the same is hereby denied."

(41) That your Petitioner has sued Hon. George W. Bristow, at present a Justice of the Supreme Court of

Illinois in a conspiracy action, filed in the Circuit Court of Cook County on Oct. 27, 1952, entitled *Paysoff Tinkoff, plaintiff* v. *Dwight H. Green, et al.,* claiming One Million ($1,000,000.00) Dollars damages, No. 52 C 11331.

(42) That your Petitioner filed a Petition for a Writ of Prohibition against Hon. George W. Bristow, then sitting as an Assistant Judge in the Circuit Court of Cook County, in the Supreme Court of Illinois on June 3rd, 1941, for having stricken your Petitioner's Jury Demand (R. 296) and further denied your Petitioner a public trial in open Court (R. 296), but insisted on same being held in Chambers, and further arbitrarily dismissed his suit for $100,000.00 (R. 299), and entered judgment on a counter-claim (R. 300, 309, 310) without a hearing against your Petitioner, in the amount of $17,797.20 on May 27, 1941 (R. 309, 310).

III.

Constitutional Questions Relied on to Give this Court Jurisdiction.

Your Petitioner represents that he has raised the following Constitutional questions before the Supreme Court of Illinois, which were acted on and denied by the Court, and preserved for review before this Court.

(A)

The Petitioner was denied a hearing before the Court, as guaranteed him by the Constitutions of the State of Illinois, and of the United States, on his Petition for Reinstatement in that (1) his Petition was denied without granting Petitioner an opportunity to be heard, and (2) without introducing any evidence, and (3) without the filing of any pleadings thereafter.

(B)

The Supreme Court of Illinois denied your Petitioner "Due Process", in that the Court erroneously applied the rule of law that the conviction of your Petitioner was conclusive, in a disbarment and reinstatement proceeding; and that your petitioner was barred from showing (1) written proof of innocence, and (2) that he was deprived of "due process" in his conviction, and therefore that the conviction was void, and (3) extenuating circumstances, and (4) that only rehabilitation evidence was admissible in a Reinstatement proceeding.

(C)

That the Supreme Court denied your Petitioner a "fair hearing" and "Due Process" in the following:

(1) in denying your Petitioner the right to "certify" the record before the Commissioners to the Supreme Court, upon the prepayment of costs, and

(2) in refusing to mark the Report of Proceedings of July 31, 1935, "Presented" and

(3) in not treating the Petition for Reinstatement as a "case" or "record matter," and in treating same as a "non-record matter", and

(4) in refusing to publish its opinion, pursuant to Sec. 21, Chap. 37, 1951 Ill. Rev. Statutes; and

(5) in that Hon. George W. Bristow, a Justice of the Supreme Court had failed to disqualify himself due to personal bias and prejudice against your petitioner.

POINTS AND AUTHORITIES.

A.

Petitioner was entitled to a fair and impartial hearing, as guaranteed by the Due Process Clause of the Constitutions of the State of Illinois and of the United States.

Truax v. *Corrigan,* 257 U.S. 312 (332); 42 S. Ct. Rep. 124 (129).

Windsor v. *McVeagh,* 93 U.S. 274, 23 L. Ed. 914, (915).

B. & O. R. R. Co. v. *U. S.,* 298 U. S. 349 (368-9), 56 S. Ct. Rep. 797.

Ng Fung Ho v. *White,* 259 U. S. 276; 42 S. Ct. Rep. 492 (494).

Morgan v. *U. S.,* 298 U. S. 468; 50 S. Ct. Rep. 906 (911, 912).

Braceville Coal Co. v. *People,* 147 Ill. 66.

B.

The filing of a Petition for Reinstatement is a "Case".

Muskrat v. *U. S.,* 219 U. S. 346; 31 S. Ct. Rep. 250 (254).

C.

That Petitioner was deprived of "Due Process," when he was prevented in his Disbarment and in his Reinstatement proceeding, from introducing any "evidence of justification," but was limited only to evidence of "Rehabilitation"; in other words, the conviction was conclusive in a disbarment and reinstatement proceeding.

Same as (A) above and
Selling v. *Radford*, 243 U. S. 46.
In re Barton, 54 F. (2) 810.
In the Matter of Sleeper, 251 Mass. 6.
People v. *Burton*, 39 Colo. 164.
Mobile J. & K. C. R. Co. v. *Turnispeed*, 219 U. S. 35; 31 S. Ct. Rep. 316.
Meeker v. *Lehigh Valley R. R. Co.*, 236 U. S. 412; 35 S. Ct. Rep. 328 (335).

D.

The Petitioner was denied Due Process, when he was denied the right to certify the record and abstract the same for review; and further when one of the Justices, being biased and prejudiced, against the Petitioner, failed to disqualify himself in this proceeding.

E.

The Petitioner was denied a "fair hearing" and "Due Process", when the Court denied Petitioner the right to introduce any evidence relating to "Rehabilitation" in the Reinstatement proceeding.

Same as (A) above.

V.

ARGUMENT.

(Reasons Relied on for Allowance of Writ)

(A).

Petitioner was entitled to a Fair and Impartial Hearing, as guaranteed by the Due Process Clause of the Constitutions of the State of Illinois and of the United States.

The question presented concisely is "Was petitioner entitled to a hearing on his Petition for Reinstatement?"

Second "Is the Petition for Reinstatement" a "case" under Sec. 21, Chap. 37, 1951 Ill. Rev. Stat.?

The Supreme Court denied your Petitioner's Petition for Reinstatement, without giving your petitioner, an opportunity (1) to be present (2) to introduce evidence, and (3) without allowing any pleadings to be filed in objection thereto.

The Commissioners to whom this matter was referred by the Court on May 19, 1949, did on June 16, 1949 recommend, on their own motion, the denial of the petition for reinstatement, without even notifying your Petitioner that said Commissioners would have a hearing on the Petition, and same was filed on June 25, 1949.

Your Petitioner filed his Objections to said Recommendations and Report of the Commissioners on July 5, 1949 (R. 42) and the Court refused to act on said Objections from 1949 to date, no order having been entered by the Court, specifically relating thereto.

That it took the Court practically 3 years and 5 months to act on this Petition for Reinstatement, the same being

filed May 16, 1949, and order denying same was entered on Nov. 11th, 1949, and motion to vacate denied Jan. 13, 1953, the order being entered without an opinion, and as though the Petition was a motion only, this being contrary to Sec. 19, Art. II, Bill of Rights, of Constitution of Illinois, guaranteeing speedy justice, without delay, which is shown in Appendix.

That the Court denied your Petitioner the right to have the record "certified" from the Commissioners to the Court, and thus made part of the record to this Court, in support of his Petition for a Writ of Certiorari.

(B)

The filing of a Petition for Reinstatement is a "Case".

The right for an attorney to be "reinstated," is as valuable a "property right", as the right to be "admitted."

Though the right to be "admitted" and "reinstated" is a license or privilige to be granted by the Court; yet the Court in acting upon "admission" or "reinstatement," must exercise a judicial discretion, and not an arbitrary discretion, and the exercise of that judicial discretion constitutes a "case".

Ill. Rev. Statutes, 1951 Edition, Chapter 37, Section 21, Page 1230: Entitled "Courts"; reads as follows:

> 21. OPINIONS—RECORD OF.) Sec. 16. In the decisions of cases submitted to the supreme court, the opinions of the justices shall be delivered in writing, and filed with the other papers. Such opinions shall also be spread at large upon the records of the court.

The court must render a "decision", and an "opinion". The latter must be spread of record, in every "case" submitted to the Supreme Court.

The Court refused to render an "opinion", though a motion was specifically made therefor (R. 284), and further refused to act on this specific motion (R. 288).

The petitioner respectfully submits that the filing of his Petition for Reinstatement, constituted a "case" under the above statutes, and that the Court was bound to render an "opinion", and also a "decision", which latter would be the basis for the "judgment," entered in the "case".

The Court treated the Petition for Reinstatement as a motion to be disposed of by a summary "Order," without giving the Petitioner an opportunity to be heard, in any manner whatsoever.

That nothing is stated in the Statutes of Illinois relating to the Reinstatement of Attorneys (Chap. 37, 1951 Ill. Rev. Statutes); that the Rules of the Supreme Court do not provide for the Reinstatement of Attorneys, but only for the Admission and Disbarment thereof (Sec. 259.58 and 259.59, Chap. 110, 1951 Ill. Rev. Statutes); and that no opinion has been published in any of the Reports of the Illinois Reports (Supreme or Appellate) relating to the Reinstatement of an Attorney; and that the Law and Procedure relating thereto, as applied by the Supreme Court of Illinois, is that of the Common law only.

This Court in *Muskrat v. United States*, 219 U.S. 346, 31 S. Ct. Rep. 250, on pg. 254 said:

> "Whenever the claim of a party under the Constitution, laws, or treaties of the United States take such a form that the judicial power is capable of acting upon it, *then it becomes a case.* The term implies the existence of present or possible adverse parties, whose contentions are submitted to the court for adjudication."

(C)

That Petitioner was deprived of "Due Process," when he was prevented in his Disbarment and in his Reinstatement proceeding, from introducing any evidence of "justification," but was limited only to evidence of "Rehabilitation" in other words, the conviction was conclusive in a Disbarment and a Reinstatement proceeding.

Amicus Curiae says as follows:

> (R. 277) "This court will not go behind the record of conviction. The only relevant evidence in such a hearing is whether or not there was a trial and a conviction. Proof of that was made and it was upon that record that the respondent was disbarred.
>
> (R. 279) The respondent contends that he was innocent when convicted of a crime involving moral turpitude. That contention cannot be sustained on the present record under the decisions of this Court.
>
> (R. 226) "This Court has repeatedly stated that it will not go behind a record of conviction of a crime involving moral turpitude, and that such conviction is *conclusive* upon the Court. • • •
>
> Respondent's remedy if he was innocent in the criminal trial, is either to have his conviction set aside by the courts having jurisdiction, or (R. 227) to secure a pardon from the United States on the ground of innocence.
>
> "The petitioner in effect desires that a new trial be had before the Commissioners on the question of his guilt or innocence in his former conviction. No *precedent* can be cited for this anomalous *proposition* (Italics supplied)."

The statute relating to disbarment specifically provides that the attorney "be heard in his defense, and allowed reasonable time to collect and prepare testimony for his justification."

This statute contains no provision relating to reinstatement.

The Statute is as follows: Illinois Revised Statutes, 1951 Edition, Chapter 13—Attorneys and Counselors.

Section 8. *Notice—Defense—Effect of striking from roll.*

"Section 8. Every attorney before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him, *and he shall, after such notice, be heard in his defense, and allowed reasonable time to collect and prepare testimony for his justification.*"

If what the Court says is true then the provisions of the statute for the attorney "to prepare * * testimony for his justification," would be meaningless, because no defense could be set up in the disbarment proceeding, after the complainants introduced the certified copies of the Indictment and the conviction, because same being conclusive, no evidence of any kind could be introduced in the disbarment proceeding.

The hearing granted thereon, would be just a formality, an empty shell, of notice of the hearing, without granting any opportunity to set up a "defense of justification," as (1) extenuating circumstances, (2) the nature of the crime, whether infamous or not, (3) whether the attorney was guilty of many crimes or only one crime; and (4) the reputation and character of the attorney prior to the conviction, and (5) all other facts to show lack of evil intent or wrongdoing, or (6) a gross miscarriage of justice, and (7) especially written proof of his absolute innocence.

The Court applies the same rules of law and evidence in a Reinstatement proceeding; and that is, that the conviction is conclusive evidence of the want of good moral character to practice law; and that the discovery of facts,

after the conviction, to show (1) a fraud practiced upon the Court, (2) that the conviction was lacking in Due Process, (3) that perjury was committed with the knowledge and consent of the prosecuting officials, (4) that evidence of innocence was suppressed by the prosecuting officials, and (5) that there has been a gross miscarriage of justice, are all irrelevant and immaterial, and that the very Court and Commissioners that are sworn to administer justice,—with knowledge of all the facts, not only disregards the truth, but ignores the same,—and lets the very Court itself be the perpetrator and means of perpetuating the injustice, and not the medium of doing Justice, and undoing injustice.

(D)

CONCLUSION.

Your Petitioner's dilemma is that the Federal Courts in which your Petitioner was convicted state that your Petitioner must first be reinstated in the State Court, as such is a condition precedent to the Federal Court; and the State Court says that petitioner must be first reinstated in the Federal Court, because that Court convicted the petitioner. And the Federal Court refuses to entertain jurisdiction after term time, saying that the conviction cannot be collaterally attacked, even in case of fraud.

Wherefore your Petitioner prays that his Petition for Review on a Writ of Certiorari to the Supreme Court of Illinois be allowed; and that the order of the Supreme Court of Illinois denying Reinstatement be vacated and set aside; and that the Supreme Court of Illinois grant to your Petitioner a fair and impartial hearing at an early date, pursuant to the Due Process of Law provisions of the Constitutions of Illinois and of the United States.

The above is respectfully submitted.

PAYSOFF TINKOFF, *pro se.*

(E)

APPENDIX.

Constitution of Illinois—1870
Article II, Bill of Rights.

Sec. 19. Every person ought to find a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely, and without denial, *promptly,* and *without delay.*

(F)

IN THE

Supreme Court of the United States

No.

In re: PAYSOFF TINKOFF,
An Attorney, Petitioner.

NOTICE AND MOTION.

Charles A. Leviton, Attorney, Amicus Curiae
c/o Chicago Bar Association
29 S. LaSalle St., Chicago, Ill.

Please take notice that this Notice and Motion for Leave to sue as a Poor Person, and to extend the time 20 days to file an Amended Brief in Support of his Petition for a Writ of Certiorari and also that the printed Petition for a Writ of Certiorari and Brief in Support, will be filed with the Clerk of the Supreme Court of the United States on April 11th, 1953, to be presented to the Court for its consideration, on said date, or as soon thereafter, as convenient to the Court, copies of which documents are herewith served upon you.

Paysoff Tinkoff

State of Illinois,
County of Cook—ss:

Paysoff Tinkoff, being first duly sworn, deposes and says that he served a copy of the Petition for a Writ of Certiorari and Brief in Support, and also the Notice and Motion to file as a Poor Person, and to extend the time 20 days to file his Amended Brief in Support, by enclosing same in a sealed envelope addressed to Charles Leviton, Attorney Amicus Curiae, 29 So. La Salle St., Chicago, Illinois, depositing same in the United States Mail Box, in Chicago at 10 A. M. on April 10, 1953.

Paysoff Tinkoff

Sworn to and subscribed before
me on April 10, 1953.
A. J. Petrando,
Notary Public.

(G)

IN THE

Supreme Court of the United States

No.

In re: PAYSOFF TINKOFF,

An Attorney, Petitioner.

PETITION TO SUE AS A POOR PERSON AND TO EXTEND TIME NOT EXCEEDING 20 DAYS TO FILE AMENDED BRIEF IN SUPPORT.

To the Hon. the Chief Justice and Justices of the United States Supreme Court:

Now comes your Petitioner, Paysoff Tinkoff, appearing *pro se*, and petitions this Court that an Order be entered allowing your Petitioner to file his Petition for a Writ of Certiorari as a poor person, and also to extend the time of your Petitioner, not exceeding 20 days, to file an Amended Brief in Support of his Petition for a Writ of Certiorari, and alleges as follows:

(1) That your Petitioner has been and is a resident of the City of Chicago, State of Illinois, and has been for twenty years last past; that he was convicted in July, 1934,

and was disbarred in this Court, and also in the Supreme Court of Illinois, in 1937.

(2) That because of your Petitioner's poverty he is unable to pay the costs of the filing of the Petition for a Writ of Ceriorari, and to print the Record and Abstract of Record thereof, and is also unable to give any liquid security therefor.

(3) That your Petitioner has arranged to have his Petition for a Writ of Certiorari and the Brief in Support, and this Notice and Motion (printed), through financial assistance of his friends, with great hardship to your Petitioner.

(4) That as stated in your Petitioner's petition for a Writ of Certiorari, your petitioner feels that he has been deprived of his Constitutional rights, and that the questions raised in his present petition has not been decided by this Court, or by the Supreme Court of Illinois, and by any other Federal or State Court, and that same should be decided for the guidance of the legal profession and the Courts.

(5) That your Petitioner has been prevented from showing his innocence, and that his conviction was not only a fraud upon the Courts, but also a gross miscarriage of justice.

(6) That your Petitioner requested the Record to be certified by the Supreme Court of Illinois prior to Jan. 13, 1953, when the final order was entered, and same was not certified—after submitting all copies as shown by the record, as certified—till March 17, 1953.

(7) That your Petitioner has not been able to complete his Brief in support to date, and requests twenty (20) days additional to file the same.

(8) That your Petitioner had suffered a serious heart attack in June 1948, and has been and is unable to spend more than several hours a day on his work, to gain a livelihood as an accountant, and do his own legal work, and due to financial embarrassment has been and is unable to employ competent counsel to represent him.

CONCLUSION.

Wherefore your Petitioner prays that an order be entered by this Court allowing your Petitioner to sue in Forma Pauperis, and that a further order be entered allowing your Petitioner an additional twenty (20) days to file his Amended Brief in Support of his Petition for a Writ of Certiorari, and further prays for such other and further relief, as may be just.

Paysoff Tinkoff, *pro se.*

State of Illinois,
County of Cook—ss.

Paysoff Tinkoff, being first duly sworn deposes and says, that he is the Petitioner herein, that he has read this Petition, that he has knowledge of the facts alleged, and deposes that all the allegations made therein are true.

Paysoff Tinkoff

Sworn to and Subscribed
before me on April 10, 1953.
A. J. Petrando,
Notary Public.

7

FILED
MAY 1 1953

IN THE

Supreme Court of the United States

No. 468 MISC.

In re: PAYSOFF TINKOFF,

An Attorney, Petitioner.

AMENDED BRIEF TO SUPPORT PETITION FOR A WRIT OF CERTIORARI.

PAYSOFF TINKOFF, *Pro Se.*
4326 N. Lincoln Ave.,
Chicago, Illinois.

UNITED STATES LAW PRINTING CO., CHICAGO 15, ILL. LA KEVIEW 5-6581

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IN THE

Supreme Court of the United States

No. 468

In re: PAYSOFF TINKOFF,

An Attorney, Petitioner.

AMENDED BRIEF TO SUPPORT PETITION FOR A WRIT OF CERTIORARI.

To the Honorable the United States Supreme Court:

Pursuant to leave of Court, your Petitioner herewith files his Amended Brief to Support his Petition for a Writ of Certiorari.

I.

Question of Law Endeavored to be Raised.

The petitioner has endeavored to raise these constitutional questions in his Petition for a Writ of Certiorari and same are:

(1) Has petitioner a right to be heard in support of his Petition for Reinstatement, before the Supreme Court of Illinois?

(2) Did the Supreme Court of Illinois in adopting a rule of evidence, that a conviction is conclusive evidence of want of good moral character, to warrant automatic disbarment of an attorney, deprive the attorney of a "fair hearing" as guaranteed by the "Due Process" clause of the Constitution?

(3) Is a hearing before the Supreme Court of Illinois, relating to the reinstatement of an Attorney, a "case," requiring an "opinion" to be spread of record?

(4) Is the denial by the Supreme Court of Illinois of the right to make his "record for review," a denial of a "fair hearing" under the "Due Process" clause of the Constitution?

(5) In the absence of a Statute, did the action of the Supreme Court of Illinois, contravene the common law of Illinois, when it adopted the rule of procedure that a conviction warrants the automatic disbarment of an attorney?

II.

Statement as to Petitioner's Status.

Petitioner is sixty-one (61) years of age. He was admitted to the Massachusetts Bar in 1915 and to the Illinois Bar in 1919. That he was convicted in the United States District Court for the Northern District of Illinois, Eastern Division on June 30, 1934, and Petition for Certiorari relating to the conviction was denied by this Court in 1937.

Petitioner was disbarred by the Supreme Court of Illinois on June 9, 1937, solely based on the ground of the federal conviction, said conviction being considered as "conclusive evidence" of want of "good moral character," warranting automatic disbarment; and has not been reinstated to date; that is, petitioner has been disbarred for practically sixteen (16) years, without being given any opportunity to show (1) innocence, (2) extenuating circumstances, (3) justification, (4) fraud, (5) perjury, (6) persecution, and (7) a conspiracy to practice a fraud on the trial court, by allowing perjured testimony to be introduced, with the knowledge and consent of the prosecuting officials.

That the only evidence introduced at the disbarment proceeding was the indictment and conviction.

III.

PROPOSITION OF LAW.

(A)

THE SUPREME COURT OF ILLINOIS HAD NO POWER, UNDER THE COMMON-LAW TO ADOPT AS "RULE OF EVIDENCE," THAT A CONVICTION IS CONCLUSIVE TO WARRANT AUTOMATIC DISBARMENT, AND IN ADOPTING SUCH PROCEDURE DENIED TO YOUR PETITIONER, "A FAIR HEARING," AS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

The State of Illinois has passed no *Statute* stating that an attorney convicted of a crime, infamous or otherwise, must be automatically disbarred. The Supreme Court of Illinois has adopted no *rule* that any attorney convicted of a crime, infamous or otherwise, must be disbarred.

The Supreme Court of Illinois has adopted a "rule of evidence" "that a conviction of a crime, is conclusive evidence to warrant automatic disbarment."

Amicus Curiae says (R. 277), in part as follows:

> "(2) Under the doctrine in *In re Needham,* 364 Ill. 65, since approved in *In re Pontarelli,* 393 Ill. 310, this court will not go behind the record of the conviction. The only *relevant* evidence in such a hearing is *whether or not there was a trial and a conviction.* Proof of that was made, and it was upon that record the respondent was disbarred."

And Amicus Curiae (R. 279) further says:

> "(7) In so far as his motion for vacation of the order of disbarment is concerned, it is *admitted* that the basis of that disbarment order, to-wit: *the criminal*

conviction, still stands. Respondent has cited *In re Kaufman,* 245 N.Y. 423. That case was distinguished in the *Needham* case, 364 Ill. 65, at page 69, where the Court indicated that the respondents in that case had been pardoned. A reading of the New York decision will indicate that the pardon was issued on the ground of *innocence.*"

"(8) The respondent contends that he was *innocent* when convicted of a crime involving moral turpitude. *That contention cannot be sustained on the present record under the decisions of this Court.* The conviction in the Federal Court has never been vacated or set aside nor has the respondent been pardoned on the ground of innocence. In so far as his petition for reinstatement is concerned, *the record affirmatively shows a lack of rehabilitation,* and respondent, under any circumstances, is *estopped at the threshold from asking this Court for relief in view of his misconduct since the disbarment.*" (Italics supplied).

The Supreme Court of Illinois, in *In re Pontarelli,* 393 Ill. 310, on pg. 314 says:

"In Illinois, *even without a statute on the subject,* a judgment of conviction of an attorney of a crime involving moral turpitude, is conclusive evidence of his guilt and is ground for disbarment. * * At this point, we are bound by the record and are not permitted to go behind the record of conviction which is *conclusive* of his guilt." (Italics supplied.)

Petitioner submits that in the absence of a statute, the common law prevails, and that there is a *prima facie* presumption under the common-law, that a judgment of conviction is *prima facie* evidence to warrant the disbarment of an attorney.

Mr. C. J. Cardozo in *In re Kaufman,* 245 N.Y. 423, 157 N.E. 730, says on p. 731:

"What concerns us now is that *without independent ascertainment of the fact of guilt,* disbarment followed *automatically* upon proof of the conviction." * *

p. 732:

"We are unable to yield approval to these self-imposed restrictions upon the power of the Appellate Division to do justice to its officers. * * * Upon an application for disbarment, a *judgment of conviction is not conclusive* against the attorney by force of any general doctrine of *res adjudicata*. This is though the judgment has been rendered by a court of the same sovereignty. * * * *A fortiori*, it is so when the judgment has been rendered by a court of another sovereignty. The proceedings are between different parties, for the vindication of different rights. *Cf. Matter of Rousa*, 221 N.Y. 81, 85, 87, 116 N.E. 782. So far as *common-law principles* prescribe the consequences of conviction, the *court to whose discipline an attorney is amenable may retry the issue of guilt* and punish or acquit according to the promptings of its conscience. * * * For the welfare and repute of the profession the order of disbarment stands until the presumption of its correctness has been persuasively rebutted. *But the honor of the profession does not demand the sacrifice of the innocent.*"

p. 733:

"Rare instances may arise, however, where one convicted, disbarred, and pardoned may be able to satisfy the court that his guilt has not been proved or *even to go farther and demonstrate his innocence.* In these exceptional conditions, the administration of justice would be subject to reproach *if an implacable law of remedies were to close the door forever upon the hope of vindication.* * * *"

Courts do not forget "that under the most correct administration of the law, men will sometimes fall a prey to vindictiveness of accusers, the inaccuracy of testimony, and the fallibility of jurors.' * * *It results that the petitioners have not yet had the hearing to which their claim of innocence entitles them.*" * * *

p. 734:

"In the case at hand, for illustration, it is not restricted to the scrutiny of the record in the Federal court. It may summon the parties or other witnesses be-

fore it or before a referee of its selection, and determine guilt or innocence by these or other aids. * * * The petitions when returned to the Appellate Division, will go back to a court empowered by force of this decision to probe until it reaches truth. They are then assured of that considered scrutiny which is due to the misfortune crying out to its judges that it has been the victim of oppression." (Italics supplied.)

The petitioner respectfully submits that the present petition wherein your petitioner has written evidence to show his innocence, is one of those

> "Rare instances * * where one convicted, disbarred, * * * may be able to satisfy the court that his guilt has not been proved, or even to go farther and demonstrate his innocence."

as stated by Mr. C. J. Cardozo above.

The petitioner further submits that in the absence of any Statute in Illinois, the common-law rule prevails, and that under the common-law, there is no rule of law making a conviction of an attorney, conclusive evidence to warrant automatic disbarment; but as stated by Mr. C. J. Cardozo above, said conviction is *prima facie* or presumptively correct, until overcome by evidence of innocence or other evidence showing fitness to be restored as an attorney; and on p. 732, the Chief Justice said:

> "So far as the common-law principles prescribe the consequences of conviction, the court to whose discipline an attorney is amenable *may retry the issue of his guilt* and punish or acquit according to the promptings of its conscience."

This Court in the case of *Fiswick et al.* v. *United States*, 329 U.S. 211, 67 S. Ct. Rep. 224, held that where the Appellant Fiswick had duly served his sentence pending the Appeal, the case had not become moot, because the judgment of conviction would create further "disabilities and burdens," relating to deportation, citizenship, civil rights,

in addition to his sentence, which would make his interests substantial for appeal purposes; and that therefore the judgment of conviction, though executed by completion of the sentence, was duly set aside, to avoid incidental hardships in other proceedings.

This Court on pg. 222 said:

> "An outstanding judgment of conviction for this crime stands as ominous proof that he did what was charged and puts beyond his reach any showing of ameliorating circumstances or explanatory matter that might remove part or all of the curse. And even though he succeeded in being naturalized, he would, unless pardoned, carry through life the disability of a felon, and by reason of that fact might lose certain civil rights. * *

P. 223:

> "We cannot assume, however, that Fiswick is guilty of the conspiracy charged. *He was not accorded the trial to which he is entitled under our system of government.* The conviction which he suffered was not in accordance with the law. The errors *in* the trial impeach the conviction; and he must stand in the position of any man who has been accused of a crime *but has not yet shown to have committed it.* To dismiss his case as moot would permit the Government *to compound* its error at Fiswick's expense. That course does not comply with our statutes of law enforcement." (Italics supplied.)

In the *Fiswick* case this Court set aside the conviction, though executed, because of errors shown to this Court on a direct review. In petitioner's case, the Supreme Court of Illinois, admitting that evidence of innocence was shown, admitting that extrinsic evidence of fraud, existed in procuring the judgment of conviction, denied your Petitioner the opportunity to introduce same, even though such evidence would satisfy the court of a gross miscarriage of justice. But the Supreme Court of Illinois has forever

closed the door to show the truth, solely on the ground that a conviction had been obtained, regardless, whether legally or illegally obtained.

The Supreme Court of Illinois in the case of *Meadowcroft* v. *People,* 163 Ill. 56, on p. 67, says:

> "A law which would practically shut out the evidence of a party, and thus deny him the opportunity for trial, would substantially deprive him of due process of law."

Citing with approval the case of *Board of Commissioners* v. *Merchant,* 103 N.Y. 143.

Amicus Curiae says (R. 226) (Brief pgs. 15, 25):

> "No precedent can be cited for this anomalous proposition."

Amicus Curiae admits that no case has been found in Illinois, and in fact in any other Court directly in point.

The nearest, by analogy, is *In Re Kaufman.* 245 N.Y. 423, 157 N.E. 730. In that case the Statute provided for an application for reinstatement after a "pardon," which same statute, in a different section, provided for a mandatory disbarment, after conviction.

In that case, the Court allowed the entire case to be reopened, to determine the truth, after the pardon.

In the present case, the common-law applies. There is no statute; and the question of the truth of the charge could be determined in the disbarment or reinstatement proceeding; and the petitioner was so prevented by the Court's arbitrary adoption of the procedure that "the conviction was conclusive evidence to disbar an attorney automatically."

The petitioner therefore submits, that he was denied his constitutional right to a "full and fair hearing" before the Supreme Court of Illinois, relating to his Petition for

Reinstatement, as guaranteed to the Petitioner by the Constitution, not only of the United States, but also of the State of Illinois.

(B)

THE PETITIONER WAS ENTITLED TO BE HEARD IN SUPPORT OF HIS PETITION FOR REINSTATEMENT, AND THE DENIAL OF THE SAME BY THE COMMISSIONERS AND THE COURT WAS A DENIAL OF A "FAIR HEARING," AS GUARANTEED BY THE "DUE PROCESS" CLAUSE OF THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF ILLINOIS.

Amicus Curiae says (R. 279):

> "In so far as his petition for reinstatement is concerned, the record *affirmatively shows a lack of rehabilitation,* and respondent, under any circumstances, is estopped at the threshold from asking this Court for relief in view of his misconduct since the disbarment." (Italics supplied.)

The above allegation is made by Amicus Curiae without the introduction of any evidence by your Petitioner relating to "rehabilitation;" and, in fact, being denied that right, or any right, to introduce any evidence, to support the allegations in his petition for reinstatement. The above allegation is solely based on the knowledge of the Commissioners, without introducing any evidence as part of the record, to support the above conclusion, and without submitting themselves to cross-examination by your petitioner.

This Court in the case of *Truax* v. *Corrigan,* 257 U.S. 312, 42 S. Ct. Rep. 124, p. 332, (129), through Mr. Chief Justice Taft says:

> "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before

it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. *Hurtado* v. *California,* 110 U.S. 516, 535, 4 S. Ct. 111, 28 L. ed. 232. * * *

"Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law.' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which Legislatures, executives and courts are expected to make, execute and apply laws."

The Court in the case of *Ng Fung Ho* v. *White,* 259 U.S. 276; 42 S. Ct. Rep. 492, on pg. 495, says:

"For, where there is jurisdiction, a finding of fact by the executive department is conclusive, * * and the courts have no power to interfere, unless there was either denial of a fair hearing, * * or the finding was not supported by evidence, * * or there was an application of an erroneous rule of law. * * "

P. 495):

"* * * To deport one who so claims to be a citizen obviously deprives him of liberty, as was pointed out in *Chin Yow* v. *U. S.,* 208 U.S. 13, 28 Sup. Ct. 201, 52 L. ed. 369. *It may result also in loss of both property and life, or of all that makes life worth living.* Against the danger of such deprivation without the sanction afforded by judicial proceedings, the Fifth Amendment affords protection in its guarantee of due process of law. The difference in security of judicial over administrative action has been adverted to by this court."

This Court in the case of *Windsor* v. *McVeigh,* 93 U.S. 274, 23 L. ed. 914, on p. 916 says:

"But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment

> sought should not be rendered. A denial to a party, of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party: appear, and you shall be heard; and, when he has appeared, saying: your appearance shall not be recognized, and you shall not be heard. * * * It is difficult to speak of a decree thus rendered with moderation; it was, in fact, a mere arbitrary edict, clothed in the form of a judicial sentence."

This Court in *B. & O. R. R. Co.* v. *United States,* 298 U.S. 349, 56 S. Ct. Rep. 797, on pages 368 and 369 says:

> "The due process clause assures a full hearing before the court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence, and have judicial findings based upon it."

The denial of the right to allow Petitioner to be heard or to be present to introduce any evidence to support his Petition for Reinstatement, and further to cross-examine the Commissioners present, who made the finding that the Petitioner had failed to show any evidence of rehabilitation, constituted a denial of a "fair hearing," as guaranteed by the Due Process Clause of the Constitutions of the United States and of the State of Illinois.

(C)

THE PETITIONER WAS DENIED "DUE PROCESS" WHEN THE SUPREME COURT OF ILLINOIS DENIED PETITIONER THE RIGHT TO HAVE HIS "REPORT OF PROCEEDINGS" MARKED "PRESENTED AND APPROVED."

The Supreme Court of Illinois in *People* v. *Chetlain,* 219 Ill. 248, on pg. 263, says:

> "It was no doubt the duty of the judge below to have signed a bill of exceptions containing the testimony;

> and if the judge, as stated by him, had not preserved minutes of the testimony, he should have permitted the party to have made out a statement of the evidence, and required it to be submitted to the opposite party for correction; and if the parties could not agree what the evidence was, the judge should then have corrected the bill with the best lights he possessed."

And on pages 264 and 265, the Court says:

> "But it was and is his (Judge's) duty to examine it, and to point out where the inaccuracies are, and what corrections should be made; and when the bill in his judgment, truly sets forth the proceedings and the evidence, it is his duty to sign and seal the same."

This Court, in the case of *Morgan* v. *United States,* 304 U.S. 1, 58 S. Ct. 773, on pg. 20, says:

> "The requirements of fairness are not exhausted in the taking or consideration of evidence, but extends to the concluding parts of the procedure as well as to the beginning and intermediate steps."

It is true that the lower Court may be compelled and directed by a reviewing court through its Peremptory Writ of Mandamus to approve a Report of Proceeding or Bill of Exceptions for review purposes, yet the Denial to mark the same "Presented" and also to consider same, also constitutes a denial of a "fair hearing," as guaranteed by the Due Process clauses of the Constitution of the United States and the State of Illinois.

(D)

THE ADMINISTRATION OF THE RULE HAS NOT BEEN UNIFORMLY APPLIED BY THE SUPREME COURT OF ILLINOIS.

That your Petitioner in paragraph 10 of his "Suggestions in Support of his Motion" of July 22, 1952, to mark

the tendered Report of Proceedings of July 31, 1935, "Presented," and "Approved" (R. .....) said:

> "10. This Court, in various cases, where disbarment proceedings were instituted evidently did *not* consider the judgment of conviction to be final and conclusive evidence to warrant disbarment; and this Court's attention is called particularly to the disbarment proceedings instituted against Lawrence M. Fine on or prior to 1930, not reported; and also the case of *In re Smith,* 365 Ill. 11, where this Court held that a judgment of conviction, entered on a plea of *nolo contendere,* in a criminal case is *not* conclusive evidence to warrant disbarment."

The above allegations were not denied by *Amicus Curiae* or the Court. Certainly, the rule should be applied to all indiscriminately.

(E)

THE SUPREME COURT OF ILLINOIS SHOULD HAVE ALLOWED THE PETITIONER TO PROVE HIS INNOCENCE.

This Court in the case of *Selling* v. *Radford,* 243 U.S. 46, 37 S. Ct. Rep. 376, in considering what weight should be given to an order of disbarment by the Supreme Court of Michigan, in a disbarment proceeding before this Court, said on p. 397, and p. 51:

> "We think we ought not to foreclose the subject on the answer made to the rule to show cause in the proceeding which is now before us, but *that an opportunity should be afforded the respondent,* confining himself to the propositions stated, if he is so advised, *to file the record or records of the state court* within thirty days from this date with permission by printed brief considering the record *intrinsically,* to point out any ground within the limitations stated which would prevent us from giving effect to the conclusions established by the action of the Supreme Court of Michigan

which is now before us, as we have seen, as part of the petition we are now considering." (Italics supplied.)

This Court in *Mobile J. & K. C. R. Co.* v. *Turnispeed*, 219 U.S. 35; 31 S. Ct. Rep. 136, on pg. 138, says:

> "If a legislative provision not unreasonable in itself, prescribing a rule of evidence, in either criminal or civil cases, *does not shut out* from the party affected a reasonable opportunity to submit to the jury in his defense all the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him." (Italics supplied.)

It follows that if such a statute, prescribed a rule of evidence, which did shut out to a party a reasonable opportunity to submit his defense to all issues raised by the pleadings, then such a statute would be unconstitutional, as depriving a party of due process.

Certainly it must be held to be a denial of due process, where the Court itself adopts a "rule of evidence," contrary to the common-law.

This Court in the case of *Universal Oil Products Co.* v. *Root Refining Co.*, 328 U.S. 575; 66 S. Ct. Rep. 1176, on p. 580 says:

> "The inherent power of a federal court to investigate whether a judgment was obtained by fraud, is beyond question. *Hazel-Atlas Co.* v. *Hartford Empire Co.*, 322 U.S. 238; 64 S. Ct. 997, 88 L. ed. 1250. *The power to unearth such a fraud is the power to unearth it effectively.* Accordingly, a federal court may bring before it by appropriate means all those who may be affected by the outcome of its investigation." (Italics supplied.)

This same inherent power exists in all courts, and especially in every court relating to the attorneys who practice before it.

In *"In re Needham,"* 364 Ill. 65, on p. 68, the Supreme Court of Illinois, says:

> "Courts have inherent and summary jurisdiction over attorneys practicing at their bars (*In re Day,* 181 Ill. 73, 87; *Montray* v. *People,* 162 *id.* 194)."

Certainly upon the theory of *Amicus Curiae,* the granting of a hearing, relating to the disbarment of an attorney, who has been convicted of any crime, would be a mere sham and useless act, in that no defense could be set up against such a charge, if the rule of procedure were that the proof of the conviction would be grounds for the automatic disbarment of the attorney; and that no defense of any kind could be set up in such a hearing, however, worthy and truthful it should be, to controvert the charge.

It is as much the duty of the Court to protect its officers—the attorneys—as well as the public, against any false charges being made or fraud being practiced upon the Court, so as to keep the temples of justice undefiled and pure; and the Court as well as the Bar Association should be the first to correct an injustice, and see that justice is done, to its own officers, its attorneys.

CONCLUSION.

The Petitioner respectfully submits that he has been denied a "full and fair hearing" as guaranteed by the Constitutions of the United States and the State of Illinois; that the Supreme Court of Illinois exceeded its jurisdiction, in the absence of a Statute and contrary to the common-law, in adopting a rule of procedure, making a judgment of conviction conclusive evidence to warrant the automatic disbarment of a practicing attorney; and that in enforcing said illegal rule of procedure it foreclosed the attorney from setting up any defense to the disbarment complaint, thus making the purported hearing of disbar-

ment, a sham; that the Supreme Court in exercising its inherent power of jurisdiction over its attorneys, had the duty, power and right to protect its attorneys from having a fraud perpetrated on the Court, and to do justice, and not be a party to perpetuate injustice; and that it is as much a matter of public policy that the Court protect its officers, as well as the public, to uphold its own respect and dignity, and keep the temples of justice undefiled and pure, and absolutely free from any taint of corruption and injustice.

And petitioner closes with the statements of Mr. Chief Justice Cardozo, in *In re Kaufman,* 245 N.Y. 423, 157 N.E. 730, pages 731 and 732:

> p. 731 "In these exceptional conditions, the administration of justice would be subject to reproach if an implacable law of remedies were to close the door forever upon the hope of vindication."
>
> p. 732 "They are thus assured of that considerate scrutiny which is the due of the misfortune crying out to its judges that it has been the victim of oppression."
>
> p. 732 "But the honor of the profession does not demand the sacrifice of the innocent."

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4326 N. Lincoln Ave.,
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April 30, 1953.